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## REMARKS

### I. Status of the Application.

Claims 1-42 were pending as of the date of the Restriction Requirement. In the Restriction Requirement, the Examiner determined that three distinct inventions were being claimed in the application and required that the Applicants restrict the application, under 35 U.S.C. §121 to one of the following inventions:

1. Claims 1-17 and 41, which are drawn to a drug delivery device with a catheter, a syringe, disposable tubing and a valve;
2. Claims 18-39, which are drawn to a method of fluid delivery into the body; and
3. Claim 40, which is drawn to a method of collecting fluid.

The Examiner also determined that the Applicants needed to elect a single disclosed species, pursuant to 35 U.S.C. §121. The Examiner reasoned that the application was directed to the following patentably distinct species of the claimed invention:

1. Set 1 - Figures 2, 3, 4 - Species A, B, C, respectively; and
2. Set 2 - Figures 5, 6, 7 - Species X, Y, Z, respectively.

The Applicants respectfully submit that the below restriction, provisional election and comments overcome the objections of the Examiner raised under 35 U.S.C. §121 and request that the species election requirement be withdrawn.

### II. Applicants Restrict the Application to Claims 1-17 and 41-42 Without Traverse.

Applicants elect the claims 1-17 and 41-42 of Group 1, without traverse. The Examiner failed to indicate into which group claim 42 belonged. After reviewing the claims, Applicants

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respectfully submit that the Examiner will find that claim 42 also belongs in Group 1. As indicated in the above amendments, Applicants have withdrawn claims 18-40 from consideration. Applicants will cancel and determine whether to file any divisional patent applications based on the withdrawn claims once a Notice of Allowance is received.

### **III. The Species Election Requirement Should Be Withdrawn.**

Applicants respectfully traverse the Examiner's species election requirement on the grounds that a generic claim in the application covers each species of the claimed invention.

Applicants submit that claim 1 is a generic claim. Claim 1 reads as follows:

1. A drug delivery device for animals, the device comprising:
  - a. at least one syringe;
  - b. at least one catheter placed into an animal and connected to each of the at least one syringes by at least one disposable tube; and
  - c. at least one valve that has a first position and a second position, wherein the second position receives one of the at least one disposable tubes therethrough.

Claim 1 comprises four elements: (1) at least one syringe (the "Syringe"); (2) at least one catheter (the "Catheter") placed into an animal and connected to each of the at least one syringes by (3) at least one disposable tube (the "Disposable Tube"); and (4) at least one valve that has a first position and a second position, wherein the second position receives one of the at least one disposable tubes therethrough (the "Valve"). As explained in the below chart, these four elements of claim 1 are contained in each of the identified species A-C.

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Elements	Species A (Fig. 2)	Species B (Fig. 3)	Species C (Fig. 4)
Syringe	Syringes 28, 30, 32 (p. 9, lns. 8-16)	Syringes 28, 30, 32 (p. 9, lns. 8-16, p. 12, lns. 10-13)	Syringes 28, 30, 32 (p. 9, lns. 8-16; p. 13, lns. 3-20)
Catheter	Tube 54 is connected to a catheter (not pictured) (p. 10, lns. 7-10; p. 12, lns. 1-9)	Tube 54 is connected to a catheter (not pictured) (p. 10, lns. 7-10; p. 12, lns. 1-9; p. 12, lns. 10-13)	Tube 54 is connected to a catheter (not pictured) (p. 10, lns. 7-10; p. 12, lns. 1-9; p. 13, lns. 3-20)
Disposable Tubing	Outlets 42, 46, 50, 52, 54 and connecting tube 62 (p. 9, lns. 8- 22; p. 10, lns. 1-10)	Outlets 42, 46, 50, 52, 54 and connecting tube 62 (p. 9, lns. 8- 22; p. 10, lns. 1-10; p. 12, lns. 10-13).	Outlets 42, 46, 50, 52, 54 and connecting tube 62 (p. 9, lns. 8- 22; p. 10, lns. 1-10; p. 13, lns. 3-20)
Valve	Valves 18, 20, 22, 24 each made up of subvalves 80-87, respectively (Figures 1-2, p. 8, lns. 6-23, p. 9, lns. 7-16)	Valves 18, 20, 22, 24 each made up of subvalves 80-87, respectively (Figures 1-2, p. 8, lns. 6-23, p. 9, lns. 7-16; p. 12 lns. 10-13)	Valves 18, 20, 22, 24 each made up of subvalves 80-87, respectively (Figures 1-2, p. 8, lns. 6-23, p. 9, lns. 7-16; p. 13, lns. 3-20)

As set forth in the chart above, each of Species A-C contain all of the elements of claim 1.

Therefore, claim 1 is a generic claim.

Moreover, Species A-C are not patentably distinguishable over one another. A determination by the Examiner that an election of a species is necessary must be based on a conclusion that the species are patentably distinct from one another. MPEP §806.04 (stating "the examiner should not require restriction to a reasonable number of species unless he or she is satisfied that he or she would be prepared to allow claims to each of the claimed species over the parent case, if presented in a divisional application filed according to the requirement."). As pointed out by the specification, the only differences between Species A-C is that species B and

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C do not contain as many fluid reservoirs as Species A and as a result, do not contain as many inlets and tee connectors as Species A. (pg. 12, lns. 10-20; p. 13, lns. 3-20). Applicants respectfully submit that a change in the number of fluid reservoirs and number of tubes do not render Species A-C patentably distinguishable from each other, because these changes would have been obvious to one skilled in the art in view of the specification.

Similarly, Applicants respectfully submit that Species X-Z are not patentably distinguishable over each other or Species A-C. Figure 5 demonstrates that the embodiments of Figures 1-4 can be utilized with other drug testing devices, such as a movement-responsive caging system and to a blood sampling system. (pg. 14, lns. 6-15). Figures 6-7 demonstrates that the several of the drug devices disclosed in Figures 1-4 can be used at once together. (pg. 16, lns. 12-23; pg. 17, lns. 1-14). Accordingly, Applicants respectfully submit that Species X-Z are not patentably distinguishable over each other or Species A-C, because it would have been obvious to one of ordinary skill in the art in view of the specification that more than one of the claimed devices could be used at once and the claimed device could be used with other drug testing devices. In view of claim 1 being generic and in view of Species A-C and X-Z not being patentably distinguishable over one another, Applicants respectfully submit that the Species requirement should be withdrawn.

#### **IV. Provisional Species Election.**

In the event that the Examiner disagrees with Applicants' arguments that the Species election should be withdrawn, Applicants provisionally elect Species A of Figure 2 for

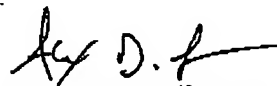
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prosecution on the merits. The following is a listing of all claims readable on the elected species:  
  
claims 1-17 and claims 41-42.

### CONCLUSION

For all of the foregoing reasons, Applicants elect claims 1-17 and 41-42. Applicants respectfully submit that the Species election requirement should be withdrawn because claim 1 is generic and Species A-C and X-Z are not patentably distinguishable over one another. In the event that the Examiner disagrees, Applicants provisionally elect Species A of Figure 2 for prosecution on the merits. Claims 1-17 and 41-42 all read on the Species A. For all of the foregoing reasons, it is respectfully submitted that Applicants have made a patentable contribution to the art. In the event Applicants have inadvertently overlooked the need for payment of an additional fee, Applicants conditionally petition therefore, and authorize any deficiency to be charged to deposit account 09-0007. When doing so, please reference the above-listed docket number.

Respectfully submitted,



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